

1 Michael V. Severo, Esq. (SBN.: 072599)  
2 **THE SEVERO LAW FIRM**  
3 301 N. Lake Avenue, Suite 315  
4 Pasadena, CA 91101  
5 (626)844-6400  
6 msevero@mvslaw.com

7 Attorneys for Defendant,  
8 CHRISTOPHER KAMON

9 **UNITED STATES DISTRICT COURT**  
10 **CENTRAL DISTRICT OF CALIFORNIA**

11 UNITED STATES OF AMERICA,  
12  
13 Plaintiff,

14 Vs.

15 CHRISTOPHER KAMON,  
16  
17 Defendant.

Case No. 23-CR-00047-JLS

**DEFENDANT CHRISTOPHER  
KAMON'S NOTICE OF MOTION  
AND MOTION FOR A PRETRIAL  
ORDER EXCLUDING EVIDENCE OF  
OTHER ACTS UNDER FED.R.EV.  
404(b); MEMORANDUM OF  
POINTS AND AUTHORITIES**

Trial Date: August 6, 2024

Hearing Date: June 20, 2024

Hearing Time: 1:30 p.m.

Courtroom 8A, Hon. Josephine Staton

Time Estimate: 30 minutes

18  
19  
20  
21 **TO ALL INTERESTED PARTIES:**

22 **NOTICE IS HEREBY GIVEN** that on June 20, 2024, at 1:30 p.m., or as soon  
23 thereafter as counsel may be heard, in Courtroom 8A of U.S. District Court for the  
24 Central District of California, located at 350 W. First Street, Los Angeles, CA 90012,  
25 Defendant CHRISTOPHER KAMON will and does hereby move this honorable for an  
26 order excluding all evidence of uncharged conduct sought to be admitted in this case but  
27 which pertain to allegations of wire fraud in a separately charged case, 23-CR-0024-  
28 JLSj, and which are not logically connected to the offenses charged.

1 This motion is made upon the grounds that the evidence proffered is  
 2 inadmissible because **(1)** it is not “inextricably intertwined” with the charged crimes in  
 3 that it is neither (a) an integral or natural part of a single criminal transaction nor (b) is  
 4 it necessary to render the prosecutors’ story of the crime coherent and comprehensive;  
 5 **(2)** the proffered evidence is not offered for any permissible purpose under Fed.R.Ev.,  
 6 Rule 404(b) and is intended only to show that the defendant acted in conformity with  
 7 his bad character and is prohibited from use by the provisions of Fed.R.Ev. Rule  
 8 404(b)(1); and **(3)** as provided by Fed.R.Ev., Rule 403, the probative value of the  
 9 proffered evidence is outweighed by its prejudicial effect, undue consumption of time,  
 10 confusion of issues and likelihood of misleading the jury; and **(4)** upon such other  
 11 grounds as hereinafter set forth.

12 This motion is based upon this notice, the annexed memorandum of points and  
 13 authorities, all other papers and pleadings on file in this action and any other oral or  
 14 documentary evidence that may be adduced at the hearing on the motion.

15 Dated: May 23, 2024

THE SEVERO LAW FIRM

16 By /s/ Michael V. Severo

17 Michael V. Severo

18 Attorney for Defendant

19 CHRISTOPHER KAMON  
 20  
 21  
 22  
 23  
 24  
 25  
 26  
 27  
 28

**TABLE OF CONTENTS**

TABLE OF AUTHORITIES..... 4

MEMORANDUM OF POINTS AND AUTHORITIES .....5

INTRODUCTION.....5

DISCUSSION .....7

    A. The Evidence Fails To Meet The “Inextricably Intertwined” Test.....7

    B. The Evidence May Not Be Admitted Under Rule 404(b) ..... 11

    C. Rule 403- The Balancing Test .....14

CONCLUSION ..... 15

## TABLE OF AUTHORITIES

### **RULES**

Fed.R.Evidence, Rule 403 .....	2, 7, 14, 15
Fed.R.Evidence, Rule 404 .....	passim

### **U.S. COURT OF APPEALS CASES**

<i>U.S. v. DeGeorge</i> 380 F.3d 1203, 1220 (9th Cir. 2004).....	8, 10
<i>U.S. v. Dorsey</i> , 677 F.3d 944 (9 <sup>th</sup> Cir. 2012) .....	8, 10
<i>U.S. v. Lillard</i> , 354 F.3d 850, 854 (9th Cir.2003) .....	10
<i>U.S. v. Miller</i> , 953 F.3d 395 (9 <sup>th</sup> Cir. 2018).....	14
<i>U.S. v. Montgomery</i> , 150 F.3d 983, 1000-01 (9 <sup>th</sup> Cir. 1998).....	14
<i>U.S. v. Vizcarra-Martinez</i> , 66 F.3d 1006, 1012 (9 <sup>th</sup> Cir. 1995).....	8, 9
<i>U.S. v. Vo</i> , 413 F.3d 1010, 1017 (9 <sup>th</sup> Cir. 2010) .....	12
<i>United States v. Cox</i> , 963 F.3d 915 (9 <sup>th</sup> Cir. 2020) .....	14
<i>United States v. Gorman</i> , 613 F.3d 711, 719 (7th Cir. 2010).....	10
<i>United States v. Green</i> , 617 F.3d 233, 245 (3d Cir.) .....	8
<i>United States v. Jimenez-Chaidez</i> , 96 F.4th 1257 (9 <sup>th</sup> Cir. 2024) .....	7, 12, 13
<i>United States v. Loftis</i> , 843 F.3d 1173, 1178 (9 <sup>th</sup> Cir. 2016).....	11, 14
<i>United States v. Soliman</i> , 813 F.2d 277, 278 (9 <sup>th</sup> Cir.1987).....	8
<i>United States v. Williams</i> , 989 F.2d 1061, 1070 (9 <sup>th</sup> Cir.1993) .....	8

### **U.S. DISTRICT COURT CASES**

<i>U.S. v. Garcia</i> , 730 F.Supp.2d 1159 (C.D.Cal. 2010).....	14
-----------------------------------------------------------------	----

**MEMORANDUM OF POINTS AND AUTHORITIES****INTRODUCTION**

On January 31, 2023, the Government filed an indictment against Thomas V. Girardi (“Girardi”) and CHRISTOPHER KAMON (“KAMON”).

Girardi is a former lawyer who was prominent in the area of personal injury law, specifically catastrophic injuries including mass torts. He practiced law under the rubric of “Girardi & Keese” (hereafter “GK”). KAMON is alleged to have been the head of accounting at GK. GK employed several lawyers and support staff.

In this case, KAMON is alleged to “knowingly and with intent to defraud, devised, participated in, and executed a scheme to defraud” several clients, in violation of 18 U.S.C. 1343 (wire fraud). The Indictment is stated in five counts, representing four separate cases handled by Girardi.

Factually, the Indictment alleges that Girardi and Kamon diverted client’s funds taken from the client trust account from settlements obtained by Girardi for the clients but which were not paid to them or paid by diverting funds from other clients. It states, in part, that “Client 1’s” case was settled in 2013, that Girardi misrepresented the terms of the settlement to Client 1, that \$28 million was deposited in Girardi’s client trust account and that the funds were misappropriated in 2013. The diversion of Client 1’s funds is not, however, charged in any of the counts.

Count One charges that on June 17, 2019, a \$4,000,000 settlement obtained by Girardi for Client 4 and Client 5, which was deposited in the Girardi client trust account was spent for fees and costs unrelated to Client 4 and Client 5.

Count Two states that on July 1, 2019, funds were withdrawn from the Client 4 and Client 5 settlement to pay \$2,500,000 to Client 1.

Count Three charges that on May 22, 2020, funds in the sum of \$128,250 received from a settlement obtained by Girardi for Client 3 in October 2018, were used to pay Girardi costs and expenses unrelated to Client 3.

Count Four in essence states that Girardi settled Client 2’s case for \$504,400 in

1 April 2020. The funds were received in Girardi's client trust account in June 2020. On  
2 June 25, 2020, the sum of \$ 504,400 was used to pay Girardi's costs and expenses  
3 unrelated to Client 2.

4 Count Five charges that on July 9, 2020, \$15,000 were "wired" from the GK  
5 operating account to American Express to pay for charges incurred on a GK Corporate  
6 American Express Card (the "Corporate AmEx") issued to KAMON and that the source  
7 of the funds were the settlement proceeds belonging to Client 2.

8 The Government has provided notice to the defense that it intends to offer  
9 evidence that KAMON engaged in a "side fraud" by embezzling millions of dollars from  
10 the GK law firm. The allegations of the government's alleged side fraud are the subject  
11 of a separate case against KAMON only. The case is pending before this court and is  
12 numbered CR 23-00024 JLS. KAMON has pleaded not guilty and the case is presently  
13 set for trial in this court on October 22, 2024. A copy of the Government's notice is  
14 attached hereto as Exhibit A.

15 In this regard, the Government has listed two witnesses that are intended to  
16 testify at trial, viz., Isidro Bravo ("Bravo") and Nicole Rokita ("Rokita") and has further  
17 listed trial exhibits 331 through 341 that are intended to establish that KAMON diverted  
18 funds from GK. Copies of the pertinent trial exhibits are attached hereto and collectively  
19 marked Exhibit B.

20 Exhibit 331 are images of checks written to Rokita Management between June  
21 2017 and September 2018. Exhibit 332 are images of checks written on the GK  
22 operating account between January 2018 and September 2020, payable to  
23 Bravo's Construction. Exhibit 333 through 339, inclusive, are images of purported  
24 invoices from Bravo's Construction between 2011 and 2014. Exhibit 340 appears to be  
25 a listing of amounts mostly between 2011 and 2015, as well as March through May 2019.  
26 Finally, exhibit 341 is a printout showing an apparent transfer of funds to Porsche  
27 Financial Services in the sum of \$121,494.23 on August 13, 2020.

28 By this motion, KAMON seeks to exclude the testimony of Bravo and Rokita and

1 Exhibits 331 through 341 and any other evidence of uncharged conduct not related to  
2 the offenses charged in this case.

### 3 DISCUSSION

4 The government's proffered evidence is strictly confined to allegations that  
5 KAMON embezzled GK's funds – and does not connect with the scheme allegedly  
6 concocted by Girardi to embezzle client funds. Thus, the evidence lacks relevance to  
7 prove any element of the crimes charged in the instant case.

8 Any evidence which suggests that KAMON embezzled funds from Girardi &  
9 Keese is improper propensity evidence – it tends to establish the government's  
10 allegations that KAMON is a thief, and thus must have been part of Girardi's scheme to  
11 embezzle funds belonging to his clients. The court may not admit evidence of a  
12 defendant's "other acts" to establish that he is "more likely guilty of the charged offense  
13 because of his past behavior." *United States v. Jimenez-Chaidez*, 96 F.4th 1257 (9<sup>th</sup> Cir.  
14 2024).

15 In its notice, the Government states that the proffered evidence is "inextricably  
16 intertwined" with the charged offense, or alternatively, is offered to prove motive to  
17 commit the offense.

18 On both counts, the Government's position regarding admissibility of other acts  
19 evidence is wrong.

20 Moreover, the evidence of other acts sought to be introduced is wholly the  
21 province of the offenses charged in CR 23-00024 JLS. Essentially, by admitting the  
22 evidence the court would be inviting a side show that is the subject of a different trial.  
23 Thus, and as more particularly discussed below, the evidence is excludable under  
24 Federal Rules of Evidence, Rule 403.

#### 25 A. The Evidence Fails To Meet The "Inextricably Intertwined" Test

26 In its notice, the Government first argues that the proffered evidence does not  
27 come within the ambit nor is it subject to the protections of Rule 404(b) because the  
28 evidence is inextricably intertwined with the current charges. Evidence of other

1 uncharged criminal acts of a defendant falls under Federal Rule of Evidence 404(b) but  
2 when the evidence offered relates to conduct that is in fact an element of the crimes  
3 charged, Rule 404(b) does not apply.

4 That is, there is an exception to Rule 404(b) which applies when the evidence is  
5 “intrinsic” to the charged crime. *U.S. v. Vizcarra-Martinez*, 66 F.3d 1006, 1012 (9<sup>th</sup> Cir.  
6 1995).

7 Most courts today apply the “inextricably intertwined” test in order to determine  
8 whether evidence is intrinsic. The inextricably intertwined standard varies widely  
9 among the circuit courts of appeals. *United States v. Green*, 617 F.3d 233, 245 (3d Cir.).

10 “The policies underlying rule 404(b) are inapplicable when offenses committed  
11 as part of a ‘single criminal episode’ become other acts simply because the defendant ‘is  
12 indicted for less than all of his actions.’” *United States v. Williams*, 989 F.2d 1061, 1070  
13 (9<sup>th</sup> Cir.1993), quoting *United States v. Soliman*, 813 F.2d 277, 278 (9<sup>th</sup> Cir.1987).

14 It is worth noting that the notion that offenses may be admitted as being  
15 inextricably intertwined with the current offense has been severely criticized as “elastic  
16 and inviting abuse.” See *Green*, supra.

17 Notwithstanding the criticism, the Ninth Circuit has recognized two categories of  
18 evidence that may be considered “inextricably intertwined” with a charged offense and  
19 therefore admitted without regard to Rule 404(b). See *United States v. Vizcarra–*  
20 *Martinez*, supra at 1012. “First, evidence of prior acts may be admitted if the evidence  
21 “constitutes a part of the transaction that serves as the basis for the criminal charge.  
22 Second, prior act evidence may be admitted when it was necessary to do so in order to  
23 permit the prosecutor to offer a coherent and comprehensible story regarding the  
24 commission of the crime.” *U.S. v. DeGeorge* (9th Cir. 2004) 380 F.3d 1203, 1220; See  
25 also, *U.S. v. Dorsey*, 677 F.3d 944 (9<sup>th</sup> Cir. 2012).

26 The evidence offered in this case does not fit either of the categories.

27 In the first instance, the Government makes much of the fact that the proffered  
28 evidence is admissible because it is the subject of Count Five. Count Five in this



1 indictment concentrates exclusively on a single transaction on July 9, 2020, i.e., a  
2 payment to the Corporate AmEx, not KAMON's personal AmEx. The Government fails  
3 to tie the \$15,000 payment to any GK bank account or to any of the embezzled client  
4 proceeds. Moreover, the Government cannot establish that the payment of the  
5 Corporate AmEx was not for legitimate GK corporate expenses. The sole fact that the  
6 Corporate AmEx was issued to GK and KAMON does not alone establish that the  
7 charges to the card were unauthorized corporate expenses. Nor does it establish that  
8 the payment made was made by KAMON. The mere fact that the Government chose to  
9 "throw in" a count regarding the payment to a Corporate American Express would  
10 require this court to defer to the whims of the prosecution and would substantially  
11 eviscerate the *Vizcarra-Martinez* standard that allows the admission of other acts only  
12 if those other acts and the charged conduct are part of "a single criminal transaction," or  
13 if the other acts are necessary to render the prosecutor's story "coherent and  
14 comprehensive."

15 The overarching story in this case is the abhorrent conduct by a lawyer in  
16 diverting his clients' funds. That he used staff members to carry out his scheme does  
17 not render isolated conduct – such as a single payment of a facially apparent authorized  
18 expense as alleged in Count Five– as an act of malfeasance by the staff.

19 Neither the exhibits nor the witnesses proffered are able to establish a connection  
20 between the amounts set forth in the exhibits and client funds in Counts One through  
21 Four. While Count Five alleges that the \$15,000 payment was made to American  
22 Express on a corporate card issued to Girardi & Keese and KAMON, the Government  
23 cannot point to any charge on the Corporate AmEx that was an unauthorized charge  
24 made by Kamon. Thus, to establish these factors would require additional evidence and  
25 what is, in fact, a different trial set on a different date.

26 Obviously, the proximity in time between the other acts and the charged conduct  
27 can be relevant to whether those acts are inextricably intertwined. But the other acts in  
28 this case are not temporally connected to any of the counts. As seen on Exhibit B,

1 invoices from Bravo's Construction date back to between 2011 and 2015, with a few in  
2 2020. None of the payments on the disclosed exhibits establish that the funds to pay the  
3 Corporate AmEx came from Client 2's settlement. Count Five is specifically alleged to  
4 have occurred on July 9, 2020. Clearly, there is no connection between any alleged  
5 payment to Bravo and Count Five. Also, the payments to Rokita Management date from  
6 2017 to September 2018 – a time period long before the Corporate AmEx payment.

7 This is hardly the type of evidence that demonstrates a single criminal act, as in  
8 *Dorsey*, supra, or that is necessary in order to offer a cohesive story, as in *DeGeorge*,  
9 supra.

10 In *Dorsey*, the defendant was charged with having shot another. The evidence  
11 offered by the prosecution and admitted by the court was the testimony of a witness who  
12 saw the defendant the day before in possession of the same type of firearm that was used  
13 to shoot the victim. Clearly, the evidence was part of a single criminal act, i.e.,  
14 possession of the gun used to shoot the victim. Thus, as the Seventh Circuit has stated,  
15 unless the evidence proves the charged crime, it must be viewed under Rule 404(b) and  
16 not as inextricably intertwined. See *United States v. Gorman*, 613 F.3d 711, 719 (7th Cir.  
17 2010).

18 In *DeGeorge*, supra, the indictment alleged various counts of wire and mail fraud  
19 in connection with a scheme to defraud an insurer of a yacht. The prosecution sought to  
20 introduce evidence that the defendant had previously lost three insured vessels at sea  
21 and collected on the policies in every instance. The prosecution offered the evidence  
22 under the first category, i.e., that the evidence was part of a single criminal act.

23 However, the *DeGeorge* court rejected the government's claim in this regard noting that  
24 the prior losses were too far removed in both time and circumstance to be linked with  
25 the alleged fraud in the case as part of a "single criminal episode." *U.S. v. DeGeorge*, 80  
26 F.3d at 1220, citing *U.S. v. Lillard*, 354 F.3d 850, 854 (9th Cir.2003). Conversely, the  
27 Ninth Circuit found that the evidence fit into the second category. The Government had  
28 alleged a scheme that "included sham transactions to hide his ownership of the boat and

1 concealment of his loss history on the insurance application. The Government presented  
2 evidence, including Ebeling's testimony, to support this allegation. The jury would not  
3 have understood the relevance of the transactions and concealment without hearing at  
4 least some explanation for why DeGeorge could not obtain insurance in his own name.”  
5 *Id.* at 1220.

6 In the context of mail and wire fraud, the Ninth Circuit has held that uncharged  
7 transactions *that are part of an overall scheme* are “part of the same transaction” as the  
8 charged transactions, such that evidence of the uncharged transactions falls under the  
9 first inextricably intertwined exception. *United States v. Loftis*, 843 F.3d 1173, 1178 (9<sup>th</sup>  
10 Cir. 2016).

11 Here, the evidence of alleged conduct by KAMON in 2017 through 2018 (Exhibit  
12 331 and Rokita testimony), in 2018 through June 2020 and a check for September 2020  
13 (Exhibit 332 and Bravo testimony), Bravo Construction invoices from 2011 through  
14 2014 (Exhibits 333 through 339 and Bravo testimony), list of payments 2011 through  
15 2019 (Exhibit 340 and possibly Bravo testimony), and a payment to Porsche Financial in  
16 August 2020 for the account of GK (Exhibit 341) add nothing to the government’s  
17 presentation of the evidence in Count Five charging conduct in 2020. More  
18 fundamentally, the evidence does not tend to prove any of the elements necessary to  
19 establish the embezzlement of client funds as stated in Counts One through Four.

20 The Government labels the proffered evidence as a “side fraud.” This is a  
21 shorthand admission by the Government that the evidence is a “side *show*” and is not  
22 intrinsic to any of the crimes charged in this case. It is thus quite manifest that the  
23 proffered evidence conduct is not inextricably intertwined and must be viewed through  
24 a Rule 404(b) prism.

25 B. The Evidence May Not Be Admitted Under Rule 404(b)

26 As an alternative argument, the Government seeks to introduce the proffered  
27 evidence as 404(b) “other acts” evidence.  
28

1 By now it should be abundantly clear that the real purpose of the proffered facts  
2 is to demonstrate that KAMON had a propensity to embezzle funds and thus commit the  
3 offenses charged in this case and nothing less. Of course, such purpose is prohibited by  
4 404(b)(1). *U.S. v. Vo*, 413 F.3d 1010, 1017 (9<sup>th</sup> Cir. 2010).

5 But the Government contends that the other acts are admissible under Rule  
6 404(b) to show KAMON's "motive, opportunity, intent, preparation, plan, knowledge,  
7 absence of mistake, and/or lack of accident for the offenses charged in the overall  
8 scheme." Exhibit A, page 2. The Government's position in this regard is that KAMON  
9 "knowingly and intentionally participated in the overall scheme in order to facilitate his  
10 ongoing embezzlement in the side fraud." The Government's shotgun approach to this  
11 argument in a conclusory fashion is insufficient to come within the exceptions to Rule  
12 404(b). The Government fails to tie any of the acts to any specific 404(b) exception and  
13 explain how they fit.

14 Nor can it.

15 As noted earlier, the evidence sought to be introduced at trial as shown in Exhibit  
16 B hereto are not temporally connected to any of the embezzlement of client funds, nor  
17 does the Government offer any other evidence that demonstrates that any of the funds  
18 allegedly taken by KAMON were connected to a specific client much less to Girardi's  
19 overall scheme as charged in the indictment.

20 Rule 404(b)(2) allows the use of "other acts" evidence if it is genuinely offered to  
21 show "motive, opportunity, intent, preparation, plan, knowledge, identity, absence of  
22 mistake, or lack of accident." *Id.* at 1018.

23 "In making admissibility decisions, the [district] court will admit Rule 404(b)  
24 evidence if (1) the evidence tends to prove a material point; (2) the prior act is not too  
25 remote in time; (3) the evidence is sufficient to support a finding that the defendant  
26 committed the other act; and (4) (in cases where knowledge and intent are at issue) the  
27 act is similar to the offense charged." *U.S. v. Jimenez-Chaidez, supra; U.S. v. Vo*, 413  
28 F.3d 1010, 1018 (9<sup>th</sup> Cir. 2005).

1 “To satisfy the first and fourth requirements (relevance and similarity),...the  
2 Government must show a ‘logical connection’ between the defendant’s knowledge  
3 obtained from commission of the [other] acts and the knowledge at issue in this case  
4 (Citations omitted.) The logical connection must be supported by some propensity-free  
5 chain of reasoning (Citations omitted.)” *U.S. v. Jimenez-Chaidez*, 96 F.4<sup>th</sup> at 1265. Yet,  
6 the Government offers no such reasoning. It simply asserts baldly and generally that  
7 KAMON was motivated to participate in Girardi’s scheme without pointing to any  
8 evidence that demonstrates any of the elements of charged offenses.

9 The Government does not point to any evidence that establishes that KAMON  
10 made material misrepresentations to clients or that he embezzled any funds from the  
11 client trust account.

12 The “other acts” sought to be introduced do not aid the Government in  
13 establishing any of the elements of the charged offenses, nor does the Government  
14 demonstrate how the performance of the other acts aided in Girardi’s overall scheme,  
15 aid in proving KAMON’s knowledge or intent, or any other specific exception found in  
16 Rule 404(b). In fact, the listed exhibits are not tied to any of the counts charged in the  
17 offense. Therefore, they are not relevant at all.

18 Nor is KAMON’s alleged conduct “similar” to the charged conduct in order to  
19 satisfy the fourth requirement. *Jimenez-Chaidez, supra*. As alleged in the indictment in  
20 this case, the one and only scheme to defraud charged in this case is one “to defraud  
21 victim clients to whom defendant GIRARDI and Girardi Keese had agreed to provide  
22 legal services...and to obtain money and property from such victim clients by means of  
23 material and fraudulent pretenses, representations, and promises, and the concealment  
24 of material facts, including material facts that defendant GIRARDI had a duty to  
25 disclose.” Indictment, page 4, par. 2.

26 The other acts offered are not acts of misrepresentation to clients regarding their  
27 legal cases. They are not “logically connected” to the charged offense. Therefore, they  
28 are not similar to the conduct charged in this case.

1 “The elements of wire fraud are: (1) the existence of a scheme to defraud; (2) the  
2 use of wire, radio, or television to further the scheme; and (3) a specific intent to  
3 defraud.” *United States v. Loftis*, 843 F.3d 1173, 1177 (9th Cir. 2016). It requires a  
4 showing that defendant knowingly participated in a scheme to defraud. *See, U.S. v.*  
5 *Miller*, 953 F.3d 395 (9th Cir. 2018).

6 As noted above, the wire fraud elements require that KAMON participate in  
7 making false statements to clients in order to obtain their money from cases entrusted  
8 to Girardi for handling. The other acts sought to be introduced have no similarity or  
9 relevance to Girardi’s alleged scheme; nor are they connected in time.

10 Accordingly, the proffered evidence does not fall within any of the exceptions to  
11 Rule 404(b) and would be introduced for the sole purpose of demonstrating a  
12 predisposition to commit fraud in general.

13 The evidence must be excluded.

14 C. Rule 403- The Balancing Test

15 “In addition to satisfying the four-part test [of Rule 404(b)], evidence of other  
16 crimes must also satisfy the Rule 403 balancing test—its probative value must not be  
17 substantially outweighed by the danger of unfair prejudice. ... The Government has the  
18 burden of demonstrating that the evidence of other crimes satisfies these  
19 requirements.” *U.S. v. Montgomery*, 150 F.3d 983, 1000-01 (9th Cir. 1998); *United*  
20 *States v. Cox*, 963 F.3d 915 (9th Cir. 2020).

21 Further, the Advisory Committee Notes to Rule 404 state: “The determination  
22 must be made whether the danger of undue prejudice outweighs the probative value of  
23 the evidence in view of the availability of other means of proof and other facts  
24 appropriate for making decisions[s] of this kind under Rule 403.” *See also U.S. v.*  
25 *Garcia*, 730 F.Supp.2d 1159 (C.D.Cal. 2010).

26 Rule 403 states in its entirety that, “The court may exclude relevant evidence if  
27 its probative value is substantially outweighed by a danger of one or more of the  
28

1 following: unfair prejudice, confusing the issues, misleading the jury, undue delay,  
2 wasting time, or needlessly presenting cumulative evidence.

3 A proper balancing of the equities under Rule 403 compels the conclusion that  
4 this evidence must be excluded. In fact, the Government's proffered evidence meets all  
5 but one of the factors in Rule 403, i.e., admission of the evidence will cause unfair  
6 prejudice, confuse the issues, mislead the jury, unduly delay the trial, waste time on  
7 irrelevant issues.

8 The Government's evidence would result in a distraction from the main issues  
9 charged in the Indictment. Because it is propensity evidence – already barred by the  
10 provisions of Rule 404 – the danger that the jury would be asked to focus on those acts  
11 and adjudge KAMON a dishonest person would take up substantial court time and time  
12 away from the trial of the issues here.

13 More to the point is the evidence's lack of probative value, as argued above.

14 A decision to allow the evidence would also require that KAMON to present a  
15 defense, not only to the charges in this case, but to the charges in CR 23-00024 JLS.  
16 This would necessitate additional time and resources and may delay the trial in this  
17 case.

### 18 CONCLUSION

19 For all the reasons stated, defendant respectfully requests that his motion to  
20 exclude evidence of prior "other acts" be granted.

21 Dated: May 23, 2024

THE SEVERO LAW FIRM

22 By /s/ Michael V. Severo

23 Michael V. Severo

24 Attorney for Defendant

25 CHRISTOPHER KAMON